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SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2011 AUG 22 PM 4:56

SANDRA L. HANNAH, CLERK

BY:

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI**

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN DEMOCKER,

Defendant.

) **P1300CR201001325**

)

)

) *Reply:*

) **MOTION FOR CHANGE OF VENUE**

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) **(Hon. Warren Darrow)**

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The Defendant, by and through undersigned counsel, hereby Replies to the state's

Response, re: change of venue from Yavapai County to another county.

Concerning the local media coverage in this case, the state wrote in its Response:

There is no strong implication or conclusion in these news reports that the Defendant is guilty as charged. The fact that the news reports describe the Defendant as a stockbroker simply does not rise to the level of presumed prejudice. Finally the blogs from the local newspaper have an almost equal split between pro and anti defendant bias"

(Response, pg. 4).

First, the phrase "an almost equal split" for and against the Defendant is scary in a fair trial context. The blogs may or may not be an accurate reflection of potential jurors' feelings

about the case. But, as a starting point, “50%¹ against the Defendant” certainly benefits the state. The state ignored the content of the anti-Defendant blogs, which are strongly worded, and generally have no concept of the presumption of innocence nor the Constitutional Right to a Fair Trial. Further, what was attached to the Motion for Change of Venue was *a very small sample* of overwhelming coverage – and negative blogs – over the last three years. If the Court requires ALL the coverage and blogs for three years, it can be provided.

An August 10, 2011 on-line article (which was in the printed paper), was entitled:

“DeMocker's lawyer asks for trial delay and change of venue.” One of the attached blogs read:

Posted: Thursday, August 11, 2011
Article comment by: More Waste More DeLoser

The defendant is a waste of tax payer dollars. His continuous assault on the legal system has delayed his own trial for years now. Yet they want to blame the prosecutors for delay? Please. Escaping justice is only temporary - you WILL have your day in court democker.

The word choice, “Escaping justice is only temporary” is indicative of the attitudes reflected in these blogs. Another blog stated:

Posted: Thursday, August 11, 2011
Article comment by: RE: Change of Venue Request.

Defense ask for a change venue siting this newspaper and local radio station reports as proof of prejudice. Comments following Courier articles prove nothing considering the same people could be posting multiple comments in this section. *There is no way for the defense to prove who is posting or how often.* The request should be denied and the trial should be moved back to Prescott. Potential jurors have returned their questionnaires and it looks like 47 out of 200 have already decided DeMocker is guilty. These numbers don't reflect a "tainted jury pool" they reflect the majority of the people might be candidates to serve on the jury. (Italics added).

As that last blog writer noted, there is no way for the Defense to prove who is posting.

¹For argument's sake, the figure “50% against the Defendant” is used here. It is higher than 50% in the blogs attached to the Venue Motion: 41 blogs are against to 35 blogs for.

But, even using that writer's numbers, "47 out of 200 have already decided DeMocker is guilty," that still an instant 23.5% that the state has on their side – without a single witness or piece of evidence produced. Again, this blogging reflects no concept of the presumption of innocence nor the Constitutional Right to a Fair Trial.

Nor can we as a society ignore or dismiss blogs in the latter part of 2011 as some kind of lunatic fringe. As newspaper circulation goes down, blogs and the internet are more commonly an un-checked source of "news" for people. The bloggers involved in this case appear to be closely watching and reading the Clerk's "High Profile Cases" site to study this case.

In any response to a motion for change of venue, the defense can expect a lengthy dissertation of the horrible facts and coverage of other cases, such as St. v. Bible, 175 Ariz. 549 (1993), for the proposition that NO case rises to the required level of pre-trial prejudice for a change of venue. But, the analysis must be more case-by case.

But consider the news coverage in this case. Virtually as soon as any motion is filed in this case, a newspaper article appears. As soon as there is a hearing, a newspaper article appears.

This case is very well known and has events in it which few cases have. It is a popular topic of conversation. Most of that conversation – as the blogs reveal – is not positive.

The state incorrectly dismissed the fact that the Defendant had been referred to as a "stockbroker." That term along with the picture of the Defendant commonly used in each article illustrates the problem: the paper's summation of this case, in virtually every article it prints – for a three year period, and still available online – contains a strong implication conclusion that the Defendant is guilty as charged. The continued mention of the word "stockbroker" in articles, in relation to the Defendant, invokes an image of class warfare, and that the Defendant must be rich and entitled. The "smiling" from-the-side picture of the Defendant contributes to that image.

The state also ignored that the “news sources” do not state that the Defendant is *presumed innocent* under the Constitutional protections guaranteed by the U.S. and Arizona Constitutions.

Concerning the jury questionnaires, the Defendant has now analyzed all 685 that we received. A disturbing trend is prominent in these questionnaires. The Jury Questionnaire Media Statistics are as follows:

799 people on the jury panel
685 questionnaires returned

- 1) **Potential Jurors who have seen the news media about this case**
103 people = 15%
- 2) **Potential Jurors who have seen the news media and have formed an opinion/cannot be impartial**
53 people = 8%
- 3) **Potential Jurors who have seen media and believe the Defendant is guilty**
131 people = 19%
- 4) **Potential Jurors who have seen media and believe Steve is not guilty**
5 people = 0.7%
- 5) **Potential Jurors who know family members/witnesses/friends or have an independent knowledge of case.**
38 people = 6%

Total of people affected by the media (1, 2, 3, 4)

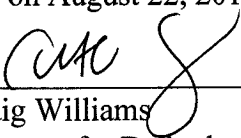
292 people = 43%

That, without any actual evidence having been presented. As to the issue of "guilty" versus "not guilty," the vote was 131 to 5!

The media coverage will most likely effect the jury pool against the Defendant. Thus, the only location for the Defendant can receive a fair trial is in another county.

It simply cannot be argued that the media coverage has not effected the jury pool. The only location for the Defendant can receive a fair trial is in another county.

RESPECTFULLY SUBMITTED on August 22, 2011.



Craig Williams
Attorney for Defendant

Original delivered via the Clerk's Office to:
Hon. Warren Darrow, Judge of the Superior Court

Jeff Paupore, Yavapai County Attorney's Office
Greg Parzych, via e-mail.
The Defendant, via mail.

By:  _____